RECENT IMPORTANT DECISIONS

BILLS AND NOTES—ASSIGNMENT OF A NOTE BY AN INSANE PERSON—Defendant had executed a note payable to one Bush, who, while insane, had transferred it to Crews, plaintiff's intestate. Defendant set this insanity up in a sworn plea and denied that the plaintiff was the real party in interest in the note sued upon, and also, by other special pleas, set the insanity up as a defense. A demurrer to the pleas was sustained, on the ground that the contract of assignment of a note by an insane person is not void but voidable only, and that insanity is a personal plea, and therefore not available to the defendant. *Held,* the demurrer should have been overruled. *Walker* v. *Winn* (1905), — Ala. —, 39 So. Rep. 12.

The rule in Alabama is that the contract of an insane person is absolutely void. *Dougherty* v. *Powe,* 127 Ala. 577; *Wilkinson* v. *Wilkinson,* 129 Ala. 279; *Galloway* v. *Hendon,* 131 Ala. 280; *Milligan* v. *Pollard,* 112 Ala. 465; *Kennedy* v. *Marrast,* 46 Ala. 161; *Rawdon* v. *Rawdon,* 28 Ala. 565. (See also *Savings and Loan Society* v. *DeLashmutt,* 67 Fed. 399; *Dexter* v. *Hall,* 82 U. S. (15 Wall.) 9; *Hannahs* v. *Sheldon,* 20 Mich. 278; *Burke* v. *Allen,* 29 N. H. 106.) These authorities take the view that there is no concurrence of the minds necessary for a valid contract. Where this doctrine is followed the contract of assignment of the note being void, it logically follows that the party contracting gets no title by reason of the attempted assignment. *Hannahs* v. *Sheldon,* supra; *Burke* v. *Allen,* supra; *Seaver* v. *Phelps,* 11 Pick. 304. Having no title, such a party has no more right to sue than a stranger to the instrument. Ala. Code § 28.

BILLS AND NOTES—NECESSITY FOR IDENTIFICATION OF PAYEE OF CHECK—PAYMENT OF FORGED CHECK.—The drawee of a forged check, payable to bearer, sues the first indorser on the theory that such indorser was negligent in cashing a check for a stranger without identification and giving it circulation. Payment was made by plaintiff's cashier in reliance upon the indorsements rather than upon the signature of the drawer. The cashier was well acquainted with the drawer's signature. *Held,* that a decree for complainant should be reversed. *Farmers' and Merchants' Bank* v. *Bank of Rutherford* (1905), — Tenn. —, 88 S. W. Rep. 939.

This case presents the interesting spectacle of one party, who has been grossly negligent, and thereby sustained losses, seeking to recover from another, not a party to such negligence, on the ground that the loss was due to other negligence on the part of the latter. It is also of interest, in that, while not overruling in terms, because unnecessary, the case upon which the chancellor predicated his decree, here reversed, it substantially does so. The case referred to is that of *Peoples' Bank* v. *Franklin Bank,* 88 Tenn. 299, 6 L. R. A. 724, where, under very similar facts, the defendant was held liable on the ground of negligence. In that case it was said, "the fact that the indorser bank is unable to give the name of the person who presented the forged check * * * is sufficient negligence to make it liable," and this although the drawee bank relied on the indorsement and paid the check

without investigating its genuineness. That case is to be distinguished from the present, however, in that there the check was payable to order, hence there was a duty to identify the party presenting, while in this case there was no such duty because the check was payable to bearer. Also, in that case payment was made direct to the indorsing bank, while here the check was sent through correspondent banks. Here the complainant bank was the only one negligent. The drawee bank is chargeable with knowledge of the check drawers' signature and must pass upon it. DANIELLS' NEGOT. INSTRUMENTS (5th Ed.) § 1654A; *Bank* v. *Bank,* 58 Ohio St. 207; *Howard* v. *Bank,* 28 La. 727; *Bank* v. *Bank,* 107 Mo. 402; *Janin* v. *Bank,* 92 Cal. 14; *Peoples Bank* v. *Cupps,* 91 Pa. St. 315; *Bank* v. *Peyton,* 15 Tex. Civ. App. 184; *Mackintosh* v. *Bank,* 123 Mass. 393; and *Bank* v. *Bank,* 101 Iowa 530. Also see note 2 L. R. A. 96. And if the drawee bank pays out money upon a forged check it cannot recover back the amount from the party to whom it was paid. *Bank* v. *Ricker,* 71 Ill. 439; *Bank* v. *Bank,* 58 Ohio St. 207. *Neal* v. *Coburn,* 92 Me. 139; *Bank* v. *Peyton,* supra; *Bank* v. *Pease,* 168 Ill. 40; and *Bank* v. *Bank,* 46 N. Y. 77. Contra, *Bank* v. *Bangs,* 106 Mass. 441, where payment was made through a clearing house and cognizance is taken of certain clearing house rules. But it seems on principle that such a fact does not alter the case. (See Cases, supra.) See also dissenting opinion in *Bank* v. *Bank,* 88 Tenn. 299.

CARRIERS—LIMITATION OF AMOUNT OF LIABILITY BY SPECIAL CONTRACT—NEGLIGENCE—LIMITATION VALID.—Plaintiff lost, through the negligence of the defendant, a suit case which she shipped from Philadelphia to Norwood, Pa. The express receipt contained a stipulation that, in consideration of the carrying rate charged, the company should not be liable for more than fifty dollars, which was agreed to be the value of the goods. *Held,* that this stipulation was valid and the plaintiff could not recover the real value of the goods, even though they were lost through the negligence of the defendant. *MacFarlane* v. *Adams Express Co.* (1905), (C. C. E. D. Pa.) 137 Fed. Rep. 982.

This decision is in accordance with the weight of authority; *Hart* v. *Penna. R. R. Co.* (1884), 112 U. S. 331, 5 Sup. Ct. Rep. 151 being probably the leading case; but it is worthy of special note inasmuch as the facts upon which it is based arose in Pennsylvania, whose courts have steadfastly adhered to the old common law rule that a common carrier cannot limit the amount of its liability for negligence. See *Grogan* v. *Adams Express Co.* (1886), 114 Pa. St. 523, 7 Atl. Rep. 134, which declares that a carrier is liable for the full value of goods lost through negligence even though the shipper had signed a contract limiting the amount of its liability and had declined to pay for any higher risk; also *Weiller* v. *Railroad Co.* (1890), 134 Pa. St. 310, 19 Atl. Rep. 702, and *Ruppel* v. *Railroad Co.* (1895), 167 Pa. St. 166, 31 Atl. Rep. 478. *Hart* v. *Penna. R. R. Co.* holds that a contract, fairly made, between the shipper and the carrier, is valid, even though the carrier be negligent, when an "agreed valuation," on which the rate of freight is based, is stated therein. Most courts agree, on grounds of public policy, that a common carrier should not be allowed to limit its common